

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lauren Kerstein	Team: Squad #7	CCRB Case #: 201412543	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/17/2014 4:45 PM	Location of Incident: [REDACTED]	Precinct: 113	18 Mo. SOL 6/17/2016	EO SOL 6/17/2016	
Date/Time CV Reported Thu, 12/18/2014 1:24 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 12/18/2014 1:24 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Yevgeniy Zaytsev	12848	949825	113 PCT
2. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joel Diaz	25278	946466	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Yevgeniy Zaytsev	Force: PO Yevgeniy Zaytsev pointed his gun at § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Yevgeniy Zaytsev	Discourtesy: PO Yevgeniy Zaytsev spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
C. Officers	Abuse: Officers entered § 87(2)(b) [REDACTED] in Queens.	[REDACTED]

Case Summary

On December 17, 2014, at approximately 4:40 p.m., § 87(2)(b) arrived at his home located at § 87(2)(b) in Queens. § 87(2)(b) tried to open the front door with his house keys, but the door would not open and it appeared the locks had been changed. After seeing people inside his home, § 87(2)(b) thought he was being robbed so he pushed the door off its hinges and entered. After discovering that it was only his daughter, § 87(2)(b) and her friends, § 87(2)(b) told them to leave, which they did, and then went back to his car to get his tools to fix his front door.

During this time, § 87(2)(b) called 911 and reported that § 87(2)(b) broke into her home located at § 87(2)(b) in Queens. § 87(2)(b) told the operator she did not know why § 87(2)(b) broke into the house or if he was armed. She also gave permission for the officers to enter the house because she had locked herself in her room with six other people because she was scared.

§ 87(2)(b) was fixing his door when PO Yevgeniy Zaytsev and PO Joel Diaz arrived and exited their patrol vehicle. PO Zaytsev pointed his gun at § 87(2)(b) while allegedly commanding him to get his “fucking” hands up (**Allegations A and B**). § 87(2)(b) asked PO Zaytsev to put his gun down, to which PO Zaytsev allegedly responded that he would not put his “fucking” gun down (**within Allegation B**). Throughout the course of the interaction, PO Zaytsev allegedly stated to § 87(2)(b) “What the fuck did I just tell you,” “I don’t want to hear shit from you,” and “Shut the fuck up” (**within Allegation B**). During his investigation, PO Zaytsev, PO Diaz and another unidentified officer entered § 87(2)(b) (**Allegation C**). After verifying that § 87(2)(b) did in fact live at the location, the officers completed a Domestic Incident Report (DIR) and released § 87(2)(b) (encl.E4).

Mediation, Civil and Criminal Histories

A Notice of Claim inquiry was submitted on February 6, 2015, the results of which will be forwarded upon receipt. § 87(2)(b) accepted mediation and this case was sent to the Mediation Unit on January 7, 2015. § 87(2)(b) ultimately opted out of mediation and his case was sent back to the Investigations Unit on February 3, 2015 (encl. N1-N8). § 87(2)(b) does not appear to have a criminal history.

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) (encl. B2).
- PO Zaytsev has been a member of the service for four years and has had seven complaints filed against him (encl. B1). § 87(2)(g)
§ 87(2)(b) (encl. N11-N15):
 - In CCRB# 201114739, it was alleged that PO Zaytsev told a civilian, “Why the fuck are you walking off,” “Come here, motherfuckers, come the fuck here,” and “show me some fucking ID.” The allegations were closed as unsubstantiated due to the absence of independent corroborative evidence.
 - In CCRB# 201300962, It was alleged that PO Zaytsev stated “shut the fuck up.” The allegation was closed as complainant uncooperative.

Findings and Recommendations

Allegations Not Pleaded

- **Force:** § 87(2)(b) alleged that as PO Zaytsev was placing him into a police vehicle, his shoulders were too broad and the left side of his body hit the side of the police vehicle.

§ 87(2)(g)
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Explanation of Subject Officer Identification

- § 87(2)(b) described PO Zaytsev as a 5'10" tall, slim white man in his mid-20s to early 30s with black slicked back hair who was smoking a cigar at the beginning of the incident (encl. D1-D10). PO Zaytsev generally matches this description and PO Diaz corroborated that PO Zaytsev was smoking a cigar before they approached § 87(2)(b) (encl. G1-G8). Therefore, the gun pointed and discourtesy allegations have been pled against PO Zaytsev.

Allegation A: Force – PO Yevgeniy Zaytsev pointed his gun at § 87(2)(b)

Allegation C: Abuse of Authority – Officers entered § 87(2)(b) in Queens.

It is undisputed that PO Zaytsev approached § 87(2)(b) with his gun drawn and that officers entered § 87(2)(b) in Queens, under the mistaken belief that § 87(2)(b) was breaking into § 87(2)(b)'s home.

§ 87(2)(b) admitted to breaking down his front door after discovering the locks had been changed, which prompted § 87(2)(b) to call 911 (encl. D1-D10). In her 911 call, § 87(2)(b) stated that § 87(2)(b) did not reside in the house and that she did not know if he was there to steal something, hurt her or if he had a weapon. She informed the operator that she locked herself in her bedroom and gave the officers permission to enter her home (encl. E1-E2).

An officer is permitted to draw and point their weapon at another person when that officer reasonably fears for their safety or the safety of another. NYPD v. Gliner, OATH Index #955/00 (encl. A26-A43). Consent is one exception to the warrant requirement when entering a residence. People v. Lewis, 94 A.D.2d 44 (1st Dept. 1983)(encl. A22-A25). Even if the third party providing consent in fact lacked actual authority, apparent authority can nonetheless validate an entry if the person reasonably appeared to the police to possess authority to consent to the entry. US v. Turner, 14 Cr. 43, U.S. Dis. Lexis 75088 2014) (encl. A1-A22).

§ 87(2)(g)

After placing § 87(2)(b) in handcuffs, PO Zaytsev, and later PO Diaz and an unidentified officer, entered the house via the open front door to speak with § 87(2)(b) who was in the living room. § 87(2)(b) confirmed that § 87(2)(b) had broken into her home and that he was not allowed to be there, leading PO Zaytsev to state in his CCRB interview that he considered § 87(2)(b) to be under arrest. Only when § 87(2)(b)'s mother, § 87(2)(b), arrived did the officer's learn that § 87(2)(b) resided in the house. § 87(2)(g)

Allegation B: Discourtesy- PO Yevgeniy Zaytsev spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that as PO Zaytsev approached him, he commanded him to put his “fucking” hands up and told § 87(2)(b) that he would not put his “fucking” gun down. When

§ 87(2)(b) tried to explain the situation to PO Zaytsev, he allegedly responded, “What the fuck did I just tell you,” “I don’t want to hear shit from you,” and “Shut the fuck up” (encl. D1-D10).

PO Zaytsev denied making the discourteous statements and the only officer, who would have witnessed the statements being uttered, PO Diaz, also denied that PO Zaytsev used profanity.

§ 87(2)(g)

Pod: ____7____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date